
**APPEALS BOARD
UTAH LABOR COMMISSION**

RENATA ALENCAR,

Petitioner,

vs.

**DILLARDS and FIDELITY AND
GUARANTY INSURANCE COMPANY,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 07-0905

Renata Alencar asks the Appeals Board of the Utah Labor Commission ("Commission") to review Administrative Law Judge Holley's dismissal without prejudice of Ms. Alencar's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Ms. Alencar filed a claim for workers' compensation benefits from Dillards and its insurance carrier, Fidelity and Guaranty Insurance Company, (hereafter referred to jointly as "Dillards") for a work accident that allegedly occurred on July 7, 2007. After Ms. Alencar failed to respond to Dillards' requests for discovery, which included requests to sign medical, insurance, social security, and employment releases, Judge Holley entered her Order Compelling Discovery Responses. The order required Ms. Alencar to comply with the discovery requests by April 18, 2008, or have her claim dismissed. By April 28, 2008, Ms. Alencar still had failed to comply with Judge Holley's order and Judge Holley dismissed her claim, without prejudice.

In her motion for review, Ms. Alencar argues that she responded to discovery when she sent an email to Dillards on April 30, 2008, and requests that her case be rescheduled for hearing.

DISCUSSION AND CONCLUSIONS OF LAW

The only issue on review is whether Ms. Alencar's claim should be dismissed for failing to comply with Judge Holley's discovery order. The Commission's Rule R602-2-2(f)(6) requires both parties to "diligently pursue discovery so as not to delay the adjudication of the claim." Despite an order from Judge Holley to sign the requisite release forms and to respond to Dillards' discovery requests by April 18th, Ms. Alencar failed to comply. In her motion for review, Ms. Alencar does not dispute Judge Holley's finding that she failed to comply by the required deadline, nor does she offer any explanation for her failure. Additionally, although she claims she submitted an email

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response by April 30th, she was not responsive to Dillard's requests, answering only one of the six interrogatories, and she still failed to sign several releases as ordered.

The Appeals Board finds that Ms. Alencar's failure to comply with Judge Holley's order warrants dismissal of her claim. For these reasons, the Appeals Board affirms Judge Holley's order of dismissal, without prejudice.¹

ORDER

The Appeals Board affirms Judge Holley's decision. It is so ordered.

Dated this 30th day of September, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

¹ The Appeals Board notes that Ms. Alencar's claim was dismissed without prejudice, thus permitting her the opportunity to refile her claim when she is prepared to comply with discovery.